

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF WASHINGTON

3 In Re:)
4 CHARLES F. AND MARCELLA C.) No. 04-03781-PCW7
BLUE,)
5 Debtors.) MEMORANDUM DECISION RE:
6) DEBTORS' MOTION TO AVOID
LIEN OF HOUSEHOLD FINANCE
CORPORATION

7 THIS MATTER came before the Court for hearing on August 23,
8 2006 pursuant to debtors Charles and Marcella Blue's Motion to
9 Avoid Judicial Lien of Household Finance Corporation III under
10 11 U.S.C. § 522(f). After oral argument and supplemental briefing,
11 the matter was submitted to the Court. The Court now renders its
12 Memorandum Decision.

13 **I. FACTS**

14 Charles F. Blue and Marcella C. Blue (hereinafter "debtors")
15 filed a petition for relief under Chapter 7 on May 11, 2004. At
16 the time of filing, the debtors listed the value of their home at
17 \$110,000, and did not claim a homestead exemption.

18 Household Finance Corporation III (hereinafter "Household")
19 held a judicial lien on the property arising from a Judgment
20 entered on January 6, 2004, in the amount of \$14,264.87. During
21 the bankruptcy proceeding, the debtors did not attempt to avoid
22 Household's lien under § 522(f)(1). The debtors were granted a
23 discharge on August 11, 2004, with the final decree being entered
24 on the same day.

25 The subject property was sold on October 28, 2005 for
26 \$158,500, and at closing, Household's judicial lien was not paid.
27 Funds in excess of prior liens and closing costs continue to be
28 held by the closing agent, pending resolution of this matter. The

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1 debtors filed a motion to reopen the case on January 12, 2006, and
2 the Bankruptcy Court ordered the case reopened on January 24, 2006.
3 This Motion to Avoid Lien under § 522(f) was filed on January 28,
4 2006. Debtors also filed an Amended Schedule C on May 17, 2006,
5 which, for the first time, claimed a state homestead exemption in
6 the amount of \$40,000, pursuant to RCW 6.13.070.

7 According to the debtors' schedules, at the time of the
8 bankruptcy filing, the value of the property was \$110,000, and it
9 was encumbered by a Deed of Trust in favor of Spokane Teachers
10 Credit Union for \$61,537.00. Household held not only its third
11 position judicial lien, but also a second position Deed of Trust
12 which, per the schedules, secured a lien in the amount of \$46,440.
13 Utilizing the sale price of \$158,500, Household deducts the amounts
14 due under the two Deeds of Trust, and debtors' maximum homestead
15 exemption of \$34,850, then argues that \$15,713 is available equity
16 to which the judicial lien attaches. In debtors' response to
17 Household's objection, the debtors also utilize the sale price of
18 the home, but claim that the homestead exemption is actually
19 \$40,000, and that the judicial lien impairs the exemption by
20 \$843.88, and should be avoided.¹

21 Household also argues that the Motion to Avoid Lien brought by
22 the debtors is untimely and that debtors lack standing to avoid the
23 lien as they had, at the time of the motion, already transferred
24 title in the property. Household cites no authority regarding the
25 standing issue. It also argues that because the debtors
26

27 ¹The debtors in their brief refers to lien amounts which
28 differ from those on the schedules. There is no evidence
indicating the source of those amounts.

1 transferred title and interest in the property, they no longer have
2 a homestead in the subject property. However, no objection to the
3 Amended Schedule C filed May 17, 2006 has been filed, nor has a
4 trustee been appointed in the reopened case.

5 **II. DISCUSSION**

6 **A. Was the Motion to Void Lien Timely?**

7 Debtors are correct that there is no deadline set forth
8 in the statute or Bankruptcy Rule to bring a motion to avoid a lien
9 under § 522(f). Under § 522(f)(1), a debtor may avoid a lien if:
10 (1) the lien is a judicial lien; (2) there was a fixing of a lien
11 on an interest of the debtor in property; and (3) such lien impairs
12 an exemption to which the debtor would have been entitled. *In re*
13 *Chiu*, 304 F.3d 905, 908 (9th Cir. 2002).

14 **1. The lien is a judicial lien.**

15 The lien held by Household is a judicial lien,
16 entered on January 6, 2004, in the amount of \$14,264.87.

17 **2. There was a fixing of a lien on an interest of the** 18 **debtor in property.**

19 Household states that the debtors cannot avoid the
20 lien because they had no interest in the property when the motion
21 was filed. The debtors filed their motion after they had already
22 transferred title to the purchaser of the real property. Contrary
23 to Household's belief, however, the debtors do not necessarily need
24 to have an interest in the property at the time they move to avoid,
25 as long as they owned the subject property before the lien fixed
26 upon it. *Chiu, supra*, at 908. The debtors had an interest at the
27 time the lien attached, and the later sale of the property does not
28 preclude relief under § 522(f).

1 3. The lien impairs an exemption to which the debtor
2 would have been entitled.

3 A lien impairs an exemption to the extent that the
4 total of the judgment lien, the other liens, and the exemption
5 exceeds the value of the debtors' interest in the property. This
6 necessary element of a successful lien avoidance motion requires a
7 determination of the issue raised by the facts of this case, which
8 is: "What is the operative date to assess whether impairment
9 exists?"

10 **B. Is Impairment of Homestead Under § 522(f) Determined By**
11 **the Date the Motion is Filed, or Some Other Date?**

12 1. The value of the house.

13 The debtors and Household both contend that the
14 value of the house is determined at the time of sale, not at the
15 time of bankruptcy. Debtors cite *In re Hyman*, 967 F.2d 1316 (9th
16 Cir. Cal. 1992), in which the court stated: ". . . [i]n making
17 these calculations, the relevant figure is the actual sale price of
18 the property, not the value of the property listed by the debtor on
19 his schedule of assets." *Hyman, supra*, at 1320. The court in
20 *Hyman* was referring to sale of the debtors' property by the
21 trustee, and the debtors' claim to appreciation in excess of the
22 homestead exemption. The decision held that the homestead
23 exemption comes into play upon sale of the property, not when the
24 petition is filed.

25 The *Hyman* case largely dealt with 11 U.S.C. § 704
26 and the duty of the trustee to act in the best interest of parties
27 in interest in reducing estate property to cash, instead of a
28 motion to avoid a lien under § 522. *Hyman* is factually and legally

1 distinguishable from the current controversy.

2 A case factually similar to the current situation
3 and involving a 522(f) motion is *In re Salanoa*, 263 B.R. 120
4 (Bankr. S.D. Cal. 2001). The debtors in *Salanoa* filed a Chapter 7
5 and received a discharge. Five years later, they filed a motion to
6 reopen their case and to avoid a judicial lien after they failed in
7 an attempt to refinance their house. The court in that case had to
8 determine the operative date to value the house and the liens on
9 the house. The court stated that the petition date was the
10 operative date to value the house, and to make all § 522(f)
11 determinations. Such result is consistent with the Supreme Court's
12 holding in *Dewsnup v. Timm*, 502 U.S. 410 (1992).

13 The approach of the court in *Salanoa* has been
14 followed by other courts in the Ninth Circuit. See *In re Bruton*,
15 167 B.R. 923, 925 (Bankr. S.D. Cal. 1994)(nature and extent of
16 debtor's homestead rights are determined as of the petition date);
17 see also *In re Todd*, 194 B.R. 893 (Bankr. D. Mont. 1996). Most
18 importantly, § 522 specifically requires that the value of the
19 residence for purpose of motions under § 522(f) be determined as of
20 the filing of the bankruptcy petition. Under § 522(f)(2)(A), a
21 lien impairs an exemption if the lien to be avoided and all other
22 liens and the amount of the homestead exemption, ". . . exceeds the
23 value that the debtor's interest in the property would have in the
24 absence of any liens." Value is defined in § 522(a) as the "fair
25 market value as of the date of the filing of the petition. . . ."

26 Determination of the value of the property is a
27 necessary step in the calculation of impairment and, by statute,
28 that determination is made as of the date of filing the petition.

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1 2. The amount of the liens.

2 The petition date is the operative date to make all
3 § 522(f) determinations, including the determination of the amount
4 of the liens. In performing the mathematical calculation necessary
5 to determine impairment, all the numbers in the calculation should
6 have the same operative date. As held in *Salanoa*, the petition
7 date is the operative date to value liens because it is the most
8 equitable method for all parties and is required by the statute.
9 This allows a lien creditor to enjoy the increase in value if the
10 lien is not avoided, but at the same time, preserves the debtor's
11 rights as they existed on the petition date to the extent that the
12 lien may be avoidable under § 522(f).

13 3. Motions brought post-petition.

14 There possibly is an exception to the requirement to
15 value the property and calculate the amount of the liens as of the
16 petition date. If the debtor moves to avoid a judicial lien post-
17 discharge, as in this case, an exception to the "petition date
18 calculation" could exist. An injured creditor could be prejudiced
19 if the calculation of impairment were to be used as of the hearing
20 or motion date. *Salanoa, supra*, citing *In re Ricks*, 62 B.R. 681,
21 682-83 (Bankr. S.D. Cal. 1986) (where post-discharge motion to avoid
22 lien ruled time-barred if the creditor shows detrimental reliance
23 on debtor's prior inaction in avoiding the lien). However, the
24 creditor must introduce evidence to demonstrate that it has been
25 prejudiced by the debtor's delay or relied upon the debtors' non-
26 action to its detriment. In the current situation, Household has
27 not argued that it has been prejudiced or has suffered harm due to
28 the debtors' delay in avoiding the lien. Household merely objected

1 to timeliness of the motion, without showing prejudice. In
2 addition, much longer time delays from date of discharge to motion
3 to reopen have been permitted than the 17 months present in this
4 situation. *Chiu, supra*, at 907 (where debtor reopened case four
5 years after discharge and avoided lien). The court cannot presume
6 prejudice arose from the 17 month delay.

7 **C. Does the Homestead Impair the Exemption?**

8 The Amended Schedule C filed May 17, 2006 claims the full
9 homestead exemption amount allowed by state law which is \$40,000.
10 No objection has been filed to that exemption. The value of the
11 property on the bankruptcy schedules was \$110,000, and Household
12 has not contested the accuracy of the schedules. The calculation
13 is:

14	Amount Due First Deed of Trust:	\$ 61,537.00
15	Amount Due Second Deed of Trust:	<u>\$ 46,440.00</u>
16	Subtotal:	\$107,977.00
17	Homestead:	<u>\$ 40,000.00</u>
18		\$147,977.00

19 Clearly, Household's judgment lien impaired the exemption as of the
20 date of filing the bankruptcy petition.²

21
22 ²The property was sold approximately 17 months after the
23 filing of the petition for \$158,500. The costs of that sale (title
24 insurance, closing costs, excise tax, realtor fees, etc.) are not
25 known. Such costs are often estimated in this District at ten
26 percent (10%) of the sales price. It is not known if unpaid real
27 estate taxes existed and were satisfied at the time of sale. The
28 amounts actually then due on the underlying liens are not known.
It is certainly possible that should the calculation of impairment
be made as of the date of sale, that the judicial lien of Household
would impair the exemption just as it does when the calculation is
performed based upon the date of filing the petition. Again, it
cannot be presumed that Household was prejudiced by the debtors'
delay in filing the motion.

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D. The Appreciation in Value of the Property.

Household argues that it is entitled to the benefit of the appreciation in value of the property from the date of the bankruptcy filing to the date of sale. Debtors argue they are entitled to the benefit. In a bankruptcy proceeding, the debtor's interest in the property passes to the bankruptcy estate. *In re Alsberg*, 68 F.3d 312 (9th Cir. 1995). The parties' arguments relating to appreciation in value appear to be a dispute regarding whether the debtors are entitled to claim the homestead exemption, and, if so, the amount of the exemption. No objection has been filed to the Amended Schedule C, however. Nor has a new trustee been appointed in the reopened case. A trustee is to be appointed and any issues concerning the propriety of the homestead exemption can be addressed when the issues are properly framed and procedurally ripe for resolution.

III. CONCLUSION

The lien is subject to avoidance under § 522(f). The Court will enter an order in accordance with this decision.